

## **COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS THIRD CIRCUIT**

---

### **MEMBERS:**

Judge Dickinson R. Debevoise, Chair  
Judge William G. Bassler  
Judge A. Richard Caputo  
Judge Kent A. Jordan  
Judge Gary L. Lancaster  
Judge Mary A. McLaughlin  
Judge Louis H. Pollak  
Judge Jerome B. Simandle

### **REPORTERS:**

Professor Daniel J. Capra  
Professor Catherine T. Struve

### **STAFF:**

Theresa Burnett, Esq.  
Susan Mangino

### **INTRODUCTION:**

In the late spring of 2004 Chief Judge Anthony J. Scirica appointed a Committee of district judges to draft model civil jury instructions to help judges communicate more effectively with juries. He and the Committee recruited Professor Daniel J. Capra of Fordham University Law School and Professor Catherine T. Struve of University of Pennsylvania Law School to serve as Reporters for the Committee. Throughout its work the Committee and the Reporters received continuing assistance from Circuit Executive, Toby Slawsky, and Circuit staff members Theresa Burnett, Esq. and Susan Mangino. The project was funded by contributions from the Court of Appeals and each District Court in the Third Circuit.\*

The Committee commenced its work in September 2004. It decided to draft general instructions applicable in all civil jury trials and instructions covering the most common types of

---

\* Neither the Court of Appeals nor any Judge of that Court participated in the drafting of the Model Instructions.

federal cases in which juries can be requested. An appendix is included which indicates where instructions in other causes of action can be found. The subject matter of the Model Civil Jury Instructions is set forth in the Table of Contents that follows. The extraordinary efforts of the Reporters and the scholarly strength they brought to the task of drafting these Instructions cannot be over emphasized.

The comments the Reporters prepared that accompany each instruction proved to be so valuable that the Committee decided to include them with the final instructions. They should be useful to district court judges not only when they draft jury instructions but also when they address motions to dismiss and motions for summary judgment.

By referring to The Table of Contents beginning with General Instruction No. 1.1 and then proceeding through the Table of Contents from one instruction to the next, one may select the appropriate instruction applicable to the case at hand and thus assemble a complete charge. It must be emphasized, however, that every case is unique, having its particular fact pattern, and care must be exercised when adapting the Model Instructions to the individual case.

These Model Civil Jury Instructions remain a work in progress. The law develops as time passes. Even as the Instructions were being assembled in final form opinions of the Court of Appeals came down that required additions or revisions. Undoubtedly, judges and lawyers who use these Instructions will have suggestions for improvement. The Committee will meet periodically with its Reporters to review developments in the law and the comments of those who use the Model Instructions. Revised editions will be issued from time to time.

The Committee hopes that this work will ease the burden of district judges in preparing their jury instructions and will also provide a technique for the rapid preparation and assembly of complete instructions in suitable form for submission to the jury.

[Click here](#) to link to the Table of Contents and the model civil jury instructions.

The documents are provided in two formats: WordPerfect and PDF (for easy referral to just the Table of Contents, you should save the Table of Contents web page as one of your “favorites”)

You may e-mail any comments to: [Tburnett\\_comments\\_juryinstructions@ca3.uscourts.gov](mailto:Tburnett_comments_juryinstructions@ca3.uscourts.gov)  
Comments will be provided to the Committee for consideration at a future meeting.

# **Preliminary Instructions For Use at Commencement of Trial and/or at End of Trial**

## Chapter 1 Table of Contents

- 1.1 Introduction; Role of Jury
- 1.2 Description of Case; Summary of Applicable Law
- 1.3 Conduct of Jury
- 1.4 Bench Conferences
- 1.5 Evidence
- 1.6 Direct and Circumstantial Evidence
- 1.7 Credibility of Witnesses
- 1.8 Jury Questions for Witnesses
- 1.9 Note-Taking By Jurors
- 1.10 Preponderance of the Evidence
- 1.11 Clear and Convincing Evidence
- 1.12 Description of Trial Proceedings

## **General Instructions For Use During Trial**

## Chapter 2 Table of Contents

- 2.1 Impeachment of Witness's Character for Truthfulness
- 2.2 Judicial Notice
- 2.3 Stipulation of Testimony
- 2.4 Stipulation of Fact
- 2.5 Use of Deposition

- 2.6 Use of Interrogatories
- 2.7 Charts and Summaries in Evidence
- 2.8 Charts and Summaries Not Admitted in Evidence
- 2.9 Striking Evidence
- 2.10 Evidence Admitted for a Limited Purpose
- 2.11 Opinion Testimony
- 2.12 Foreign Language Testimony or Tape-Recording
- 2.13 Transcript of Tape Recorded Conversation
- 2.14 Recess Admonition

## **General Instructions For Use At End of Trial**

### Chapter 3 Table of Contents

- 3.1 Deliberations
- 3.2 Number of Witnesses
- 3.3 Read-Backs of Trial Testimony
- 3.4 Deadlock

## **Instructions for Civil Rights Claims Under Section 1983**

### Chapter 4 Table of Contents

- 4.1 Section 1983 Introductory Instruction
- 4.2 Section 1983 – Burden of Proof
- 4.3 Section 1983 – Elements of Claim
- 4.4 Section 1983 – Action under Color of State Law

- 4.4.1 Section 1983 – Action under Color of State Law Is Not in Dispute
- 4.4.2 Section 1983 – Determining When an Official Acted under Color of State Law
- 4.4.3 Section 1983 – Determining Whether a Private Person Conspired with a State Official
- 4.5 Section 1983 – Deprivation of a Federal Right
- 4.6 Section 1983 – Liability in Connection with the Actions of Another
  - 4.6.1 Section 1983 – Supervisory Officials
  - 4.6.2 Section 1983 – Non-Supervisory Officials – Failure to Intervene
  - 4.6.3 Section 1983 – Municipalities – General Instruction
  - 4.6.4 Section 1983 – Municipalities – Statute, Ordinance or Regulation
  - 4.6.5 Section 1983 – Municipalities – Choice by Policymaking Official
  - 4.6.6 Section 1983 – Municipalities – Custom
  - 4.6.7 Section 1983 – Municipalities – Liability Through Inadequate Training or Supervision
  - 4.6.8 Section 1983 – Municipalities – Liability Through Inadequate Screening
- 4.7 Section 1983 – Affirmative Defenses
  - 4.7.1 Conduct Not Covered by Absolute Immunity
  - 4.7.2 Qualified Immunity
  - 4.7.3 Release-Dismissal Agreement
- 4.8 Section 1983 – Damages
  - 4.8.1 Compensatory Damages
  - 4.8.2 Nominal Damages
  - 4.8.3 Punitive Damages
- 4.9 Section 1983 – Excessive Force – Stop, Arrest, or Other “Seizure”

- 4.9.1 Section 1983 – Deadly Force – Stop, Arrest, or Other “Seizure”
- 4.10 Section 1983 – Excessive Force – Convicted Prisoner
- 4.11 Section 1983 – Conditions of Confinement – Convicted Prisoner
  - 4.11.1 Section 1983 – Denial of Adequate Medical Care
  - 4.11.2 Section 1983 – Failure to Protect from Suicidal Action
  - 4.11.3 Section 1983 – Failure to Protect from Attack
- 4.12 Section 1983 – Unlawful Seizure
  - 4.12.1 Section 1983 – Unlawful Seizure – *Terry* Stop and Frisk
  - 4.12.2 Section 1983 – Unlawful Seizure – Arrest – Probable Cause
  - 4.12.3 Section 1983 – Unlawful Seizure – Warrant Application
- 4.13 Section 1983 – Malicious Prosecution
  - 4.13.1 Section 1983 – Burdens of Proof in Civil and Criminal Cases
- 4.14 Section 1983 – State-created Danger
- 4.15 Section 1983 – High-Speed Chase
- 4.16 Section 1983 – Duty to Protect Child in Foster Care

## **Instructions for Employment Discrimination Claims Under Title VII**

### Chapter 5 Table of Contents

#### 5.0 Title VII Introductory Instruction

#### 5.1 Elements of a Title VII Claim

##### 5.1.1 Disparate Treatment — Mixed-Motive

##### 5.1.2 Disparate Treatment — Pretext

##### 5.1.3 Harassment — Quid Pro Quo

- 5.1.4 Harassment (Discrimination or Retaliation) — Hostile Work Environment — Tangible Employment Action
- 5.1.5 Harassment (Discrimination or Retaliation) — Hostile Work Environment — No Tangible Employment Action
- 5.1.6 Disparate Impact
- 5.1.7 Retaliation
- 5.2 Title VII Definitions
  - 5.2.1 Hostile or Abusive Work Environment
  - 5.2.2 Constructive Discharge
- 5.3 Title VII Defenses
  - 5.3.1 Bona Fide Occupational Qualification
  - 5.3.2 Bona Fide Seniority System
- 5.4 Title VII Damages
  - 5.4.1 Compensatory Damages — General Instruction
  - 5.4.2 Punitive Damages
  - 5.4.3 Back Pay — For Advisory or Stipulated Jury
  - 5.4.4 Front Pay — For Advisory or Stipulated Jury
  - 5.4.5 Nominal Damages

## **Instructions For Race Discrimination Claims Under 42 U.S.C. § 1981**

### Chapter 6 Table of Contents

- 6.0 Section 1981 Introductory Instruction
- 6.1 Elements of a Section 1981 Claim
  - 6.1.1 Disparate Treatment — Mixed-Motive
  - 6.1.2 Disparate Treatment — Pretext

- 6.1.3 Harassment — Hostile Work Environment — Tangible Employment Action
- 6.1.4 Harassment — Hostile Work Environment — No Tangible Employment Action
- 6.1.5 Disparate Impact
- 6.1.6 Retaliation
- 6.1.7 Municipal Liability — Custom or Policy
- 6.2 Section 1981 Definitions
  - 6.2.1 Race
  - 6.2.2 Hostile or Abusive Work Environment
  - 6.2.3 Constructive Discharge
- 6.3 Section 1981 Defenses
  - 6.3.1 Bona Fide Occupational Qualification
  - 6.3.2 Bona Fide Seniority System
- 6.4 Section 1981 Damages
  - 6.4.1 Compensatory Damages — General Instruction
  - 6.4.2 Punitive Damages
  - 6.4.3 Back Pay — Advisory or Stipulated Jury
  - 6.4.4 Front Pay — Advisory or Stipulated Jury
  - 6.4.5 Nominal Damages

## **Instructions Regarding Section 1983 Employment Claims**

### Chapter 7 Table of Contents

- 7.0 Section 1983 Employment Discrimination
- 7.1 Section 1983 Employment Discrimination – Mixed Motive
- 7.2 Section 1983 Employment Discrimination – Pretext
- 7.3 Section 1983 Employment Discrimination – Harassment



- 7.4 Section 1983 Employment – Retaliation – First Amendment
- 7.5 Section 1983 – Employment – Damages – Not yet drafted

## **Instructions For Claims Under the Age Discrimination In Employment Act**

### Chapter 8 Table of Contents

#### 8.0 ADEA Introductory Instruction

#### 8.1 Elements of an ADEA Claim

##### 8.1.1 Disparate Treatment — Mixed-Motive

##### 8.1.2 Disparate Treatment — Pretext

##### 8.1.3 Harassment — Hostile Work Environment — Tangible Employment Action

##### 8.1.4 Harassment — Hostile Work Environment — No Tangible Employment Action

##### 8.1.5 Disparate Impact

##### 8.1.6 Retaliation

#### 8.2 ADEA Definitions

##### 8.2.1 Hostile or Abusive Work Environment

##### 8.2.2 Constructive Discharge

#### 8.3 ADEA Defenses

##### 8.3.1 Bona Fide Occupational Qualification

##### 8.3.2 Bona Fide Seniority System

##### 8.3.3 Waiver

#### 8.4 ADEA Damages

##### 8.4.1 General Compensatory Damages

##### 8.4.2 Back Pay

##### 8.4.3 Liquidated Damages

##### 8.4.4 Front Pay

#### 8.4.5 Nominal Damages

## **Instructions for Employment Claims Under the Americans With Disabilities Act**

### Chapter 9 Table of Contents

#### 9.0 ADA Employment Claims – Introductory Instruction

#### 9.1 Elements of an ADA Claim

##### 9.1.1 Disparate Treatment — Mixed-Motive

##### 9.1.2 Disparate Treatment — Pretext

##### 9.1.3 Reasonable Accommodation

##### 9.1.4 Harassment — Hostile Work Environment — Tangible Employment Action

##### 9.1.5 Harassment — Hostile Work Environment — No Tangible Employment Action

##### 9.1.6 Disparate Impact

##### 9.1.7 Retaliation

#### 9.2 ADA Definitions

##### 9.2.1 Disability

##### 9.2.2 Qualified Individual

##### 9.2.3 Hostile or Abusive Work Environment

##### 9.2.4 Constructive Discharge

#### 9.3 ADA Defenses

##### 9.3.1 Direct Threat

#### 9.4 ADA Damages

##### 9.4.1 Compensatory Damages — General Instruction

##### 9.4.2 Punitive Damages

##### 9.4.3 Back Pay — Advisory or Stipulated Jury

9.4.4 Front Pay —Advisory or Stipulated Jury

9.4.5 Nominal Damages

## **Instructions For Claims Under the Family and Medical Leave Act**

### Chapter 10 Table of Contents

#### 10.0 FMLA Introductory Instruction

#### 10.1 Elements of an FMLA Claim

10.1.1 Interference With Right to Take Leave

10.1.2 Discrimination — Mixed-Motive

10.1.3 Discrimination — Pretext

10.1.4 Retaliation For Opposing Actions in Violation of FMLA

#### 10.2 FMLA Definitions

10.2.1 Serious Health Condition

10.2.2 Equivalent Position

#### 10.3 FMLA Defenses

10.3.1 Key Employee

#### 10.4 FMLA Damages

10.4.1 Back Pay — Non-Willful Violation

10.4.2 Back Pay — Willful Violation

10.4.3 Other Monetary Damages

10.4.4 Liquidated Damages

10.4.5 Nominal Damages

## **Instructions For Sex Discrimination Claims Under the Equal Pay Act**

## Chapter 11 Table of Contents

### 11.0 Equal Pay Act Introductory Instruction

### 11.1 Elements of an Equal Pay Act Claim

#### 11.1.1 Basic Elements

#### 11.1.2 Retaliation

### 11.2 Equal Pay Act Defenses

#### 11.2.1 Seniority System

#### 11.2.2 Merit System

#### 11.2.3 System Measuring Earnings by Quantity or Quality

#### 11.2.4 Factor Other Than Sex

### 11.3 Equal Pay Act Damages

#### 11.3.1 General Damages

#### 11.3.2 Back Pay — Non-Willful Violations

#### 11.3.3 Back Pay — Willful Violations

#### 11.3.4 Liquidated Damages

#### 11.3.5 Front Pay

#### 11.3.6 Nominal Damages

#### 11.3.7 Damages for Retaliation

## **Appendix One**

Integrated Instruction and Special Verdict Form: Section 1983 Claim - Excessive Force (Stop, Arrest, or other “Seizure”)

## **Appendix Two**

Instructions Covered in Other Sets

## **Appendix Three**

Discussions of Jury Instructions and Decisionmaking

